

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

LAWRENCE LIGGETT,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-15-1081-D
)	
ANDREW M. SAUL, Commissioner)	
of Social Security Administration,)	
)	
Defendant.)	

ORDER AWARDING ATTORNEY FEE

Before the Court is the Motion for Attorney Fees Under 42 U.S.C. § 406(b) [Doc. No. 34], filed by Plaintiff's attorney. Miles L. Mitzner seeks approval of a fee award in the amount of \$29,395.38, to be paid out of Plaintiff's award of past-due benefits in accordance with a 25-percent contingency fee agreement between him and Plaintiff. Defendant has made a timely response [Doc. No. 35]. The Commissioner takes no position regarding the Motion, but reminds the Court of its obligation to determine a reasonable attorney fee and Mr. Mitzner's obligation to refund to Plaintiff the lesser of any § 406(b) award or the amount previously awarded under the Equal Access to Justice Act (EAJA).

Upon consideration of the Motion in light of *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002), and *Wrenn v. Astrue*, 525 F.3d 931 (10th Cir. 2008), the Court finds that Plaintiff's attorney may recover a reasonable fee for the representation of Plaintiff in this case up to the statutory limit of 25% of past-due benefits, provided the attorney refunds the lesser EAJA fee award. *See Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986); *see also* Order Awarding Att'y Fees [Doc. No. 31]. The supporting documents with the Motion, as

well as the case record, show a total of 46.25 hours of legal services performed for Plaintiff's representation in this case (30.9 attorney hours and 15.35 paralegal hours), which resulted in a favorable judicial decision. After remand, Plaintiff was determined to be entitled to benefits and was awarded a past-due amount of \$117,851.50. The Motion has been timely filed within the deadline previously set by the Court. *See* 9/11/19 Order [Doc. No. 33].

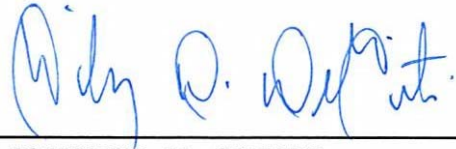
Under the circumstances presented, the Court finds that the requested amount of \$29,395.38 represents an unreasonable fee award for the work done by Plaintiff's attorney in this case, taking into account the contingent-fee agreement and other pertinent factors. *See Gisbrecht*, 535 U.S. at 808. The amount does not exceed 25% of Plaintiff's award of benefits obtained by reason of the judgment entered June 30, 2016, but it represents a windfall for Plaintiff's attorney and exceeds the amount needed to account for the contingency nature of the representation and the delay in receiving payment. The Court finds that \$21,216.25 represents a reasonable fee award under § 406(b).¹

IT IS THEREFORE ORDERED that the Motion for Attorney Fees Under 42 U.S.C. § 406(b) [Doc. No. 34] is GRANTED in part and DENIED in part, as set forth herein. The Court approves an award of attorney fees under 42 U.S.C. § 406(b) to be paid by Defendant to attorney Miles L. Mitzner in the amount of \$21,216.25. Upon payment of this amount,

¹ This amount represents a reasonable hourly rate for the attorney (\$220) multiplied by the number of attorney hours (30.9) and a multiplier of 2.5 for an attorney total of \$16,995.00, and a reasonable hourly rate for the paralegal (\$110) multiplied by the number of paralegal hours (15.35) and a multiplier of 2.5 for a paralegal total of \$4,221.25.

Plaintiff's attorney shall promptly refund to Plaintiff Lawrence Liggett the amount of the previous EAJA fee award of \$7,559.50.

IT IS SO ORDERED this 11th day of October 2019.



TIMOTHY D. DeGIUSTI
Chief United States District Judge